

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

MARK NOTEWARE,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-10-0912-HE
	)	
MICHAEL J. ASTRUE, Commissioner	)	
of the Social Security Administration,	)	
	)	
Defendant.	)	

**ORDER**

Plaintiff Mark Noteware instituted this action seeking judicial review of the final decision of the Commissioner of the Social Security Administration denying his applications for disability insurance and supplemental security income benefits. Consistent with 28 U.S.C. § 636(b)(1)(B), the case was referred to Magistrate Judge Bana Roberts, who recommends that the Commissioner’s decision be reversed and the matter remanded for further proceedings.

The magistrate judge found the decision of the Administrative Law Judge (“ALJ”) decision was flawed in that he failed to address certain objective medical evidence of record relating to whether plaintiff had an impairment or combination of impairments that met or equaled Listing 1.04(A). She also concluded the ALJ failed to evaluate plaintiff’s borderline age in conjunction with his claim for supplemental security income payments. Finally, the magistrate judge recommended that the court not order the Commissioner to issue a decision that plaintiff was disabled for supplemental security income purposes as of his fiftieth birthdays, as plaintiff requested.

The parties, having failed to object to the Report and Recommendation, waived their right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996). *See* 28 U.S.C. § 636(b)(1)(C). Accordingly, the court adopts Magistrate Judge Robert's Report and Recommendation, **REVERSES** the final decision of the Commissioner and **REMANDS** the case for further proceedings consistent with the Report and Recommendation, a copy of which is attached to this order.

**IT IS SO ORDERED.**

Dated this 18th day of August, 2011.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE